

Practice Guidance Note 3

Councillor involvement in pre application discussions

The POS Development Management Practice Project works with a group of local authorities to address issues in development management where there is a lack of published guidance. The group examines the range of approaches across the authorities to identify good practice, and this is drawn together as a practice guidance note.

Introduction

1. Encouragement by the Audit Commission and Government to involve councillors in pre application discussions on major applications, has to be seen in the wider context of dealing with as much as possible in pre application discussions and “front loading” the processing of planning applications.
2. The 2006 Local Government White paper sought to re emphasise councillors’ role as champions or advocates for their local communities. It was recognised that councillors needed to be involved in emerging issues affecting their communities. The 2006 Audit Commission study *“The Planning System – Matching Expectations and Capacity”* found that lack of councillor involvement in the pre-application stage of dealing with planning proposals was a drawback in the system. It lead to frustration when elected members took a different approach to officers. Whilst concerns about the risk of planning committee members pre-determining their views were recognised, the study asked how could members act as community champions if not engaged in pre-application discussions for major proposals affecting their communities?
3. The Planning Advisory Service also encourages member involvement in pre-application discussions on major applications, provided members’ roles at this stage are clearly understood. The role needs to be unambiguous to councillors, developers, and the public. A local protocol is needed to set out respective roles, responsibilities, and arrangements. (This could usefully be an expansion of a note explaining material needed to accompany a pre-application enquiry, and the type of response available from a Council as advocated by the 2004 National Planning Forum best practice note 2 *“Pre application discussions”*.)
4. Very few authorities have prepared a protocol to deal with members’ involvement in pre-application discussions. Without this, councillor involvement may unnecessarily open any councillor on the planning committee, to avoidable risks of challenge on apparent pre-determination. Therefore, this guidance seeks to assist local planning authorities in reviewing or establishing procedures for involving councillors in pre-application discussions on major proposals.

The purpose of pre-application discussions

5. Constructive pre-application discussions between potential applicants and planning officers have long been recognised as helping to ensure all relevant considerations are addressed when an application is submitted, and to potentially speed up the determination of an application and bring more certainty into the process.
6. Councillors and officers identifying different issues when an application is being considered by a planning committee has caused concern. Thus private sector stakeholders are looking to reduce uncertainty and ensure any additional councillors' issues are identified to be dealt with in an application submission. As "*Constructive Talk*" (the 2007 joint advice on investing in pre application discussions) explains, good pre-application advice removes as much uncertainty as possible for the developer, allowing the proposal to proceed with more confidence and reduces the risk of abortive costs arising from failed applications or expensive redesign work.
7. Councillors' engagement in pre-application discussions is not intended to bring forward their views on the proposal as such. They may or may not be in a position to give a preliminary view on a proposal, but they need to be advised that they should not express a view which may pre-determine their position in the event that they will be a member of the planning committee determining the application. If a Councillor decides to express anything but a clearly preliminary view, or at this stage decides to represent a view on behalf of their community or ward in support of their community champion role, then their pre determined "ward" role will require them to stand aside from the determination of any subsequent planning application. As a safeguard, some authorities have considered not allowing ward members of a planning committee to vote on any application in their ward. However that is not recommended as frequently a ward member will be representing a wider community and will be capable of balancing all the material considerations.
8. Officers can benefit from a degree of member guidance on an emerging proposal and from better informed members. Well informed members may well be able to assuage any unfounded fears of their local communities, as a proposal emerges.
9. The benefits of Councillor involvement can be summarised as:
 - Keeping councillors better informed on major applications
 - Engaging members on issues to be dealt with in a formal submission
 - Taking account of emerging or existing community concerns at a formative stage
 - Obtaining initial member guidance for officer negotiations on major applications
 - Reinforcing Councillors' roles in their communities.
10. Pre-application discussions are not a substitute for the formal consultation and processing of an application. They are not to conduct negotiations in public, nor to allow objectors to frustrate the process.

11. However, there is a risk that early engagement could lead to an appearance or suspicion of member pre determination. Whilst there will be cases where potential applicants seek confidential discussions, in practice these are not likely to be frequent. Given the purpose of councillors involvement described above, the discussion should not be used for negotiations. Any negotiations should be conducted with officers separately from any pre-application discussions which councillors have been involved in. Thus the need for confidential discussions is limited.
12. A good way to avoid any appearance of pre-determination is to seek to conduct the pre-application discussion with councillors in as public and transparent way as possible, with a public file note produced by the officers of the issues considered and any outcome. This principle underpins the following advice.

Options for member involvement in pre-application discussion

13. Authorities use a range of options to engage councillors on major applications. These include:
 - **Informal private briefings** – either at officer or member instigation. These include telephone briefings, or meetings between officers and members with or without potential applicants
 - **interim committee reports** – updating members on progress on major pre-application discussions by written reports to a committee
 - **developer presentations to a committee** – either to the committee as a public agenda item or as a private presentation
 - **developer forums** – developers organising pre-application consultation in accordance with statement of community involvement requirements
 - **development control forums** – local authorities agree with a developer a public forum run by the authority with representatives of consultees and various interested parties invited to hear and comment on an officer's introduction and developer's explanation of the emerging proposal.

Guidance

14. Councillors need to be *trained and reminded* of their role in pre-application discussions on a regular basis. In addition to incorporating pre-application roles in regular code of conduct training, a number of authorities start any pre-application discussion by the chair or officer reminding all concerned of the reason for members becoming engaged at this stage. They explain that planning committee members will not be in a position to indicate any view as they need to balance all material considerations before reaching a view on any application in due course. This can act as a reminder to councillors as well as a general explanation to all present. Where multi member wards exist, it will often be possible for non planning committee members to express any initial views on behalf of communities, whilst planning committee members restrict themselves to questions or clarification.
15. To minimise the risks of challenges based on suspicion that councillors may have prejudiced their positions by being involved in pre-application discussions, transparent processes,

conducted in public have great merit. Whether or not discussions are held in private, a note of those present, the issues discussed and next actions should be placed on a public file by the officer involved, to protect the member and the authority by showing what issues were discussed and that no pre-determination arose.

16. There is a potential tension between a councillor's role championing the local community and his or her position regarding a pre-application proposal which does not appear to fit with the community's aspirations. There is also a tension between, for example, arguing for the inclusion of community benefits and avoiding an impression of pre-determination. However, if the authority already has such aspirations or benefits embedded in its corporate strategy, local development framework (LDF) and sustainable community strategy (SCS), then the principle of the proposed development may already be agreed as desirable on allocated sites and the issue of apparent pre-determination on the principle of the development may not arise. This will make it easier for members to identify issues of detail as champions of the local community without worrying about pre determination. Thus a councillor active on behalf of their community needs to be encouraged to **feed community proposals into the LDF/SCS** and corporate policy framework, to integrate those proposals into the authority's strategies. If adopted as LDF/SCS policies, the effectiveness of the champion role will have been established and the risk of pre-determination may have been greatly reduced.
17. The following are **recommended as the best methods of engaging councillors in pre-application discussions.**

- **interim Committee reports on pre-application discussions,**
- **public developer presentations to committee,**
- **development control forums or enquiry by design workshops**

Committee reports are public and can be used to keep all interested councillors (not just planning committee councillors) and other parties informed.

Interim reports or public developer presentations could be on a regular committee agenda or could be presented to a special committee if appropriate. Minutes record issues to be dealt with arising from the meetings with the public able to attend.

Development control forums provide a clear context for members to listen to proposals and views as to what issues need to be dealt with in any formal submission. They are best arranged, publicised and chaired by the authority. The public are invited to attend but not to speak to keep the meeting focused on issues to be considered. Consultees, parishes, amenity societies, and public representatives are invited to speak, following an officer introduction and developer explanation of the emerging proposals. The officer explains the process, the context of the proposals and councillors' roles. Officers note the issues arising and write afterwards to record the actions needed arising from the meeting. They will also follow up on any negotiations arising. Several forums may be necessary on large proposals prior to the submission of an application.

18. **Developer forums** may work as well as Development Control forums, if they are properly arranged and inclusive of the public. There are some very good examples of these such as “enquiry by design” workshops which fully involve the community to create master plans for major development. However other developer forums organised to promote an already developed scheme, where the principal focus may be geared to the developer’s information needs, and less to the wider community and councillors’ engagement, may not be so useful. In this case there may be less opportunity to lay the issues out so as to maximise member engagement and to protect against pre-determination.
19. **Informal private briefings or private developer committee presentations** bilaterally between the authority (including councillors) and developers run the risk of raising questions about what was discussed from those suspicious of the process.

Guideline protocol points

20. Authorities therefore may wish to include the following points in a councillors pre-application discussion protocol, or to amend existing protocols or planning codes of conduct:
- Councillors are encouraged to promote any community aspirations involving sites, land or community benefits from development, or other planning issues through Local Development Framework & Sustainable Community Strategy preparation at the earliest opportunity (To embed community aspirations in corporate policy and minimise the risks of pre determination in any community championing role)
 - Councillors & the public are invited to any pre application development control forum, interim committee report discussion, or public developer presentations to the council on major applications (To ensure transparency of process & minimise private briefings)
 - The chair or officer explains the role of members present at any pre-application discussion and this is recorded in the note of the meeting.
 - Planning committee members’ role in pre-application discussions is to learn about the emerging proposal, identify issues to be dealt with in any further submissions, but not to express any initial view on the proposal as to pre-determine their view on any formal application.
 - Officers will note those present, the issues identified at the pre-application discussion meeting or forum, and take appropriate follow up action recording the outcome of the meeting to the developer and on a public file
 - Any planning committee councillor who elects to support a view for or against the development being discussed in pursuit of their community champion role will pre-determine their position to the extent they will be advised to declare a prejudicial interest, and be free to present their community views to the committee in the event of the committee considering a subsequent application, but not to vote on the application.

The project

The Development Management Practice Project is sponsored by the Planning Officers Society, and is run on its behalf by POS Enterprises and Trevor Roberts Associates. The local authorities involved in the project are Arun, Ashford, Barnsley, Bournemouth, Broadland, Caradon, Chiltern, Hambleton, Hampshire, Lichfield, Portsmouth, Redcar & Cleveland, Richmond, Suffolk, Swindon, and Wycombe. The project will run for a year in the first instance, from April 2007 to March 2008. Finalised guidance is published on the [POS web site](#) and circulated direct to Society members.